



August 30, 2007

IOWA GENERAL ASSEMBLY
LEGISLATIVE SERVICES AGENCY

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TO: Temporary Co-chairperson Senator Michael Connolly and Representative Vicki Lensing and Members of the Freedom of Information, Open Meetings, and Public Records Study Committee

FROM: Rachele Hjelmaas, Senior Legal Counsel, Legal Services Division, Legislative Services Agency

RE: Background Information

DIVISIONS

LEGAL SERVICES
RICHARD L. JOHNSON

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FISCAL SERVICES
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I. Introduction.

The purpose of this memorandum is to provide background information to the members of the Freedom of Information, Open Records, and Public Meetings Legislative Interim Study Committee. This memorandum and its attachments include the charge of the committee; committee member contact information; the September 6, 2007, tentative meeting agenda; proposed committee rules; and an overview of the Code chapters relating to open meetings (Code chapter 21), public records (Code chapter 22), and state records and archives in Iowa (Code chapter 305). References to the Code are to the 2007 Iowa Code unless otherwise noted.

II. Freedom of Information Laws — Overview.

Open meetings and public records laws, also known as freedom of information or "sunshine" laws, seek to assure public access to the decisions and conduct of governmental officials and to information contained in records held and stored by governmental bodies. However, such public access must be balanced with the need to preserve certain governmental information for personal privacy and homeland security purposes. Like all federal, state, and local sunshine laws, Iowa's open meetings and public records laws operate under a general presumption of openness. Both chapters address the conflict between public access and personal privacy and homeland security concerns by allowing limited circumstances under which access to a public meeting or an open record can be denied by a governmental body or the lawful

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custodian of a governmental record. Both Code chapters also provide an enforcement mechanism through which violations of either Code chapter may be pursued by an aggrieved party in court.

While other provisions of the Code address open meetings and public records procedures, this background information is intended to provide a basic framework of Code chapters 21 and 22.

A. Iowa's Open Meetings Law — Code Chapter 21.

Key Elements. Code chapter 21 is the state's "Open Meetings Law." The clearly stated legislative intent of this Code chapter "seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness."¹ In Code chapter 21, a "governmental body" is defined as a board, council, commission, or other governing body expressly created by state law or executive order or of a political subdivision or tax-supported district in this state, and this definition includes certain advisory boards, commissions, or task forces that develop and make public policy recommendations, and publicly supported nonprofit organizations which conduct pari-mutuel wagering.²

A meeting of a governmental body is defined as a gathering in person or by electronic means, either formal or informal, of a majority of the members of the governmental body for the purpose of deliberating or acting upon any matter within the scope of the governmental body's policymaking duties.³ This definition of a meeting for Code chapter 21 purposes does not include purely social gatherings when there is no discussion of policy or no intent to avoid the purposes of the open meetings law.⁴ Although not specifically defined in Code chapter 21, an electronic meeting between members of a governmental body may take place where a meeting in person is not possible or is impractical, public access to the conversation of the meeting is provided, the appropriate notice requirements are met, and minutes are kept of the meeting.⁵ The electronic meeting requirements do not specifically address electronic mail meetings.

Basic Requirements. Notice of a meeting must include, at a minimum, the time, date, place, and tentative agenda "in a manner reasonably calculated to apprise the public of that information" to include posting the notice in a prominent place at the principal office of the body holding the meeting or the place at which the meeting is to be held. Notice must be given 24 hours prior to the meeting unless there is good cause for not doing so and must be held in a place reasonably accessible to the public during a reasonably convenient time of day.⁶ It is important to note, however, that other provisions of Iowa law may contain notice provisions specific to the actions of certain specified governmental bodies and those provisions take precedence over the general open meeting notice provisions in Code chapter 21.⁷

Each governmental body is required to keep minutes of the meeting reflecting, at a minimum, the time, date, place, members present, and the action taken at each meeting including voting results. The minutes must also reflect why an exception to the 24-hour notice rule was made

¹ Iowa Code § 21.1.

² Iowa Code § 21.2(1).

³ Iowa Code § 21.2(2).

⁴ Iowa Code § 21.2(2).

⁵ Iowa Code § 21.8.

⁶ Iowa Code § 21.4(1).

⁷ Iowa Code § 21.4(4).

and why, if applicable, the place of the meeting or the time the meeting was held failed to accommodate public convenience. Minutes of public meetings are public records.⁸

Exceptions. The open meetings law contains 11 exceptions to the general rule of openness allowing a governmental body the discretion to close an open meeting. The exceptions allowing a governmental body to close an open meeting include an exception for the review or discussion of records required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's receipt of federal funds,⁹ an exception to discuss the disclosure of certain law enforcement matters,¹⁰ and an exception to evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered.¹¹ A complete list of all current 11 exceptions in Code chapter 21 is attached to this memorandum in Attachment E. However, under the statute, a governmental body has the discretion to keep a meeting open even if one of the exceptions could apply to a particular situation.

If the governmental body decides to hold a closed session, the governmental body must take action to do so either by an affirmative vote of two-thirds of the members or by a vote of all members present at the meeting. The vote on whether to close a meeting including the individual members' votes and the reason for closing the meeting must be specifically stated in the minutes. Once a meeting is closed, the governmental body can only discuss matters relating to the reason for closing the meeting and any final action must be taken in open session. It is important to note that a governmental body cannot begin an otherwise open meeting in closed session but must begin the meeting in open session, close the meeting if the governmental body votes to close the meeting, and take any final action in open session. Detailed minutes and a tape recording must be made of the closed session and the minutes and tape recording must be sealed and are not accessible to the public for one year from the meeting date unless ordered by a court.¹²

Enforcement. Any aggrieved person, taxpayer, or citizen of Iowa, or the Attorney General or county attorney, may bring a civil lawsuit against the governmental body to enforce violations of the open meetings law. The governmental body has the burden to demonstrate the governmental body acted in compliance with the law.¹³ The law does not specifically provide any commission or agency with the responsibility for enforcing violations of Code chapter 21.

Upon a finding by a preponderance of the evidence a governmental body has violated any provision of the open meetings law, a court shall assess each member of the governmental body who participated in the violation civil damages not less than \$100 nor more than \$500, order the payment of all costs and reasonable attorney fees to the successful party, and void any action taken in violation of the law if the lawsuit was brought within six months of the violation and the court finds that the public interest in enforcing the law outweighs the public interest in sustaining the validity of the action taken in the closed session. The court shall also remove a member of a governmental body from office if that member has had a previous violation of the open meetings law for which damages were assessed. In addition, the court may issue a mandatory injunction ordering the members of the governmental body to refrain for one year from any future violations of the law.¹⁴

⁸ Iowa Code § 21.3.

⁹ Iowa Code § 21.5(1)(a).

¹⁰ Iowa Code § 21.5(1)(g).

¹¹ Iowa Code § 21.5(1)(i).

¹² Iowa Code § 21.5(2-4).

¹³ Iowa Code § 21.6(1, 2).

¹⁴ Iowa Code § 21.6(3).

Defenses. A member of a governmental body found in violation of the open meetings law may avoid the assessment of damages if the member can prove the member voted against the closed session, had good reason to believe and in good faith believed facts, which if true, would have indicated compliance with the requirements of the open meetings law, or the member reasonably relied upon a decision of a court or formal opinion of the Attorney General or the attorney for the governmental body. The member cannot claim ignorance of the law as an excuse for violating the open meetings law.¹⁵ In addition, the appointing authority of the governmental body or the appropriate commissioner of elections is responsible for providing members with information about open meetings and records laws in Iowa.¹⁶

B. Iowa's Public Records Law — Code Chapter 22.

Key Elements. Code chapter 22 contains this state's general "Public Records Law." This statute controls public access to certain public records information in the possession of or created by a government body. A "government body" is "this state, or any county, city, township, school corporation, political subdivision, tax-supported district, nonprofit corporation other than a fair conducting a fair event as provided in Code chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to Code chapter 99D, or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official, or officer of any of the foregoing or any employee delegated the responsibility for implementing the requirements of [Code chapter 22]."¹⁷

The law allows every person to inspect and copy public records and to publish or otherwise disseminate information contained in the public record under the supervision of the lawful custodian of the records or the custodian's authorized deputy.¹⁸ The "lawful custodian" of the public records "means the government body currently in physical possession of the public record . . . but does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage."¹⁹

The public records law through its broad definition of a public record establishes a liberal policy of public access. "Public record" is defined as "information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to Code chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing."²⁰

This definition includes all communications regardless of physical form, and includes electronic data and electronic mail. The law does not specifically exempt legislative or court records, documents, tapes, or other information as a whole from the general rule of openness.

Confidential Record Exceptions. As of adjournment of the 2007 Legislative Session, Code chapter 22 contains 59 confidentiality exceptions to the general rule of openness unless released by court order, by the lawful custodian of the records, or by another person duly

¹⁵ Iowa Code § 21.6(3)(a)(1-3); Iowa Code § 21.6(4).

¹⁶ Iowa Code § 21.10.

¹⁷ Iowa Code § 22.1(1).

¹⁸ Iowa Code § 22.2(1).

¹⁹ Iowa Code § 22.1(2).

²⁰ Iowa Code § 22.1(3).

authorized to release the records.²¹ The confidential record exceptions can be characterized as broad in some cases and narrowly tailored to certain agency operations in other cases. The more common confidentiality exemptions relate to hospital and medical records, personal information in confidential personnel records, certain library records, and certain communications not required by law, rule, procedure, or contract that are made to a governmental body by identified persons outside of government if the government body could reasonably believe that general public examination would discourage those persons from communicating with the government body. The exemptions must be narrowly construed so that the legislative policy of openness will be honored.²² A complete list of all 59 exceptions is attached to this memorandum in Attachment F.

Other Public Record Exceptions. A government body is not required to permit access to or use of a geographic computer database except on terms and conditions acceptable to the governing body.²³ In addition, a government body may restrict or prohibit access to data processing software developed by the government body regardless of whether the data processing software is separated or combined with a public record.²⁴

Enforcement. Any aggrieved person, taxpayer, or citizen of Iowa or the Attorney General or county attorney may bring a civil lawsuit against the lawful custodian of a public record and any other appropriate persons to enforce violations of the open records law. The lawful custodian then has the burden to demonstrate the lawful custodian acted in compliance with the law.²⁵

Upon a finding by a preponderance of the evidence a lawful custodian has violated any provision of the open records law, a court shall issue an injunction ordering the lawful custodian and other appropriate persons to comply with the law and the court may order the lawful custodian and others to refrain for one year from future violations. The court shall assess all persons who participated in the violation civil damages not less than \$100 nor more than \$500, order the payment of all costs and reasonable attorney fees to the successful party establishing a violation, and shall order removing a person from office if that person has engaged in a previous violation of the open records law for which damages were assessed.²⁶

In addition to the civil enforcement provisions, a person who knowingly violates or attempts to violate any provision of the open records law is subject to criminal prosecution for a simple misdemeanor punishable by confinement for no more than 30 days or a fine of at least \$65 but not more than \$625 or by both and may be subject to additional criminal sanctions.²⁷

Defenses. A person found to be in violation of the open records law can claim the person either voted against the action violating the law, refused to participate in the violation or engaged in reasonable efforts under the circumstances to resist or prevent the action, had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of the law, or reasonably relied on a court decision or Attorney General opinion or the attorney for the governmental body.²⁸ A lawful custodian cannot claim ignorance of the law as an excuse for violating the public meetings law and a lawful custodian in doubt about the legality of allowing access to a government record may bring a lawsuit or request an opinion

²¹ Iowa Code § 22.7; 2007 Iowa Acts, ch. 37 (S.F. 202); 2007 Iowa Acts, ch. 175 (S.F. 559).

²² In regard to Des Moines Independent Community School District Public Records, 487 N.W.2d 666, 669 (Iowa 1992).

²³ Iowa Code § 22.2(3).

²⁴ Iowa Code § 22.3A.

²⁵ Iowa Code § 22.10(1, 2).

²⁶ Iowa Code § 22.10(3).

²⁷ Iowa Code § 22.6.

²⁸ Iowa Code § 22.10(3)(b).

from the Attorney General or the lawful custodian's attorney to determine the proper course of action.²⁹

III. State Archives and Records Act — Code Chapter 305.

Code chapter 305 relates to the retention and preservation of government records in Iowa and creates a state records and archival program. The Code chapter establishes the State Records Commission (Commission) responsible for the development and adoption of government information policies, standards, and guidelines for the creation, retention, and disposition of state agency records.³⁰ The Commission is also responsible for the adoption and maintenance of an interagency records manual for governing records management, as well as record series retention and disposition schedules and guidelines.³¹

For Code chapter 305 purposes only, an "agency" is defined as an executive or legislative branch, department, office, commission, board, or other unit of state government; "archives" are defined as records that have been appraised by the Commission as having sufficient historical, research, evidential, or informational value to warrant permanent preservation; and a "record" is specifically defined as a document, book, paper, electronic record, photograph, sound recording, or other material, regardless of physical form or characteristics, made, produced, executed, or received pursuant to law in connection with the transaction of official business of state government.³²

Code chapter 305 also defines the responsibilities of the state agency heads in relation to creating and maintaining records containing adequate and proper documentation of the agency organization, designating an official or officials with a broad understanding of agency programs and records to coordinate a records program within the agency to be the agency records officer and to be the contact person for the state archives and records program, and implementing government information policies, standards, and guidelines, and records retention and disposition schedules at the agency level for records in agency custody.³³

The Department of Cultural Affairs (DCA) is the primary state agency responsible for providing administrative personnel and services for the Commission.³⁴ The DCA's responsibilities include appointing a state archivist to head the state archives and records program, maintaining all official records of the Commission, providing training to agencies on governmental information policies, standards, and guidelines, recommending records series retention and disposition schedules to the Commission, managing a centralized records storage facility, and maintaining physical and legal custody of state archives.³⁵

IV. Attachments and Additional Background Information.

The following documents are attached to this memorandum:

- Attachment A: Committee Charge.
- Attachment B: Committee Member Contact Information.

²⁹ Iowa Code § 22.10(4).

³⁰ Iowa Code §§ 305.3, 305.8(1).

³¹ Iowa Code § 305.8(1).

³² Iowa Code § 305.2(1), (2), (9).

³³ Iowa Code § 305.10.

³⁴ Iowa Code § 305.7.

³⁵ Iowa Code § 305.9.

- Attachment C: Tentative Meeting Agenda for September 6 Meeting.
- Attachment D: Proposed Committee Rules.
- Attachment E: Code Chapter 21 Open Meetings Exceptions.
- Attachment F: Code Chapter 22 Confidential Records.

Additional information received and distributed in connection with all meetings of this Committee will be posted on the Committee's website at:

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=218>.

Freedom of Information, Open Meetings, and Public Records Study Committee

CHARGE: Review and recommend changes to Iowa's open meetings and public records laws in Code chapters 21 and 22 and the State Archives and Records Act in Code chapter 305.

MEETINGS: 3 Meeting Days

MEMBERS: 5 Senate, 5 House

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FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC RECORDS STUDY COMMITTEE

MEMBERSHIP

***Senator Michael Connolly,
Temporary Co-chair
Senator Daryl Beall
Senator Jeff Danielson
Senator Mary A. Lundby
Senator Pat Ward***

***Representative Vicki Lensing,
Temporary Co-chair
Representative Carmine Boal
Representative Elesha Gayman
Representative Bruce Hunter
Representative Libby Jacobs***

Tentative Agenda

Thursday, September 6, 2007
Room 22, State Capitol

9:00 a.m. - 9:15 a.m.	Call to Order, Adoption of Rules, Election of Co-chairs, Opening Remarks
9:15 a.m. - 10:45 a.m.	Professor Arthur Bonfield, University of Iowa College of Law
10:45 a.m. - 11:00 a.m.	Break
11:00 a.m. - 11:30 a.m.	Mr. William Angrick, Citizens' Aide/Ombudsman
11:30 a.m. - Noon	The Honorable Tom Miller, Iowa Attorney General
Noon - 1:00 p.m.	Lunch
1:00 p.m. - 1:30 p.m.	Mr. Gordon Hendrickson, State Archivist
1:30 p.m. - 2:00 p.m.	The Honorable Robert Hutchison, Fifth Judicial District Judge and Ms. Rebecca Colton, Counsel to Iowa Supreme Court Chief Justice, Iowa Judicial Branch
2:00 p.m. - 2:30 p.m.	Mr. Tom Shepherd, DAS Information Technology Enterprise
2:30 p.m. - 2:45 p.m.	Break
2:45 p.m. - 4:30 p.m.	Interest Group Presentations - 15 Minutes: Iowa Newspaper Association/Iowa Broadcasters Association-- Mr. Keith Luchtel, Lobbyist Iowa Freedom of Information Council--Ms. Kathleen Richardson, Executive Secretary Iowa State Association of Counties--Mr. David Vestal, General Counsel Iowa League of Cities--Mr. Terry Timmons, Associate General Counsel Iowa Association of School Boards--Ms. Mary Gannon, Attorney Iowa Civil Liberties Union--Mr. Marty Ryan, Legislative Director Iowa Genealogical Society--Ms. Theresa Liewer, President, Board of Directors
4:30 p.m. - 5:00 p.m.	Committee Discussion

PROPOSED RULES

**FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC
RECORDS INTERIM STUDY COMMITTEE**

1. A majority of the voting members of each house shall constitute a quorum, but a lesser number of members may adjourn or recess the Committee in the absence of a quorum.
2. A majority vote of those voting members present is necessary to carry any action; however, no recommendations to the Legislative Council or General Assembly may be adopted without the affirmative votes of at least a majority of the members of each house.
3. Whenever Mason's Manual of Legislative Procedure does not conflict with the rules specifically adopted by the Committee, Mason's Manual of Legislative Procedure shall govern the deliberations of the Committee.
4. Meetings shall be set by motion before adjournment, or by call of the Co-chairpersons of the Committee if meetings are necessary before the date set in the motion.
5. Rules shall be adopted by the affirmative votes of at least a majority of the members of each house and may only be changed or suspended by a similar vote of the Committee.

Submitted:

Attachment E

Code Chapter 21 — Open Meetings Exceptions — Iowa Code § 21.5(1)(a-k):

Information below is 2007 Iowa Code, with 2007 Code Supplement changes pending.

- a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.
- b. To discuss application for letters patent.
- c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.
- d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.
- e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.
- f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.
- g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.
- h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.
- i. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.
- j. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
- k. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50 [relating to the confidentiality of security procedures or emergency preparedness information]. [See 2007 Iowa Acts, ch. 63, (S.F. 161)].

Attachment F

Code Chapter 22 — Confidential Records — Iowa Code § 22.7(1-59):

Information below is 2007 Iowa Code, with 2007 Code Supplement changes pending.

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education records.
2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.
3. Trade secrets which are recognized and protected as such by law.
4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.
5. Peace officers' investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may be kept confidential under this subsection only for as long as the statute of limitations would have run on a respective crime that is under investigation.
6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.
7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.
8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.
9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.
10. Personal information in confidential personnel records of the military division of the department of public defense of the state.
11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

16. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "persons outside of government" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the

extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

20. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historic preservation officer pertaining to access, disclosure, and use of archaeological site records.

21. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

22. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

23. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections.

24. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

25. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

27. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

28. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

29. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.31A. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.
32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 556.2C, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 556.2C.
33. Data processing software, as defined in section 22.3A, which is developed by a government body.
34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.
35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.
36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.
37. Mediation communications as defined in section 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.
38. a. Records containing information that would disclose, or might lead to the disclosure of, private keys used in an electronic signature or other similar technologies as provided in chapter 554D.
- b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.
39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.
40. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the lowAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.
41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23.

43. Information obtained by the commissioner of insurance pursuant to section 502.607.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5.

45. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not redisseminate the information without prior approval of the administrator.

46. Military personnel records recorded by the county recorder pursuant to section 331.608.

47. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.

48. Sex offender registry records under chapter 692A, except as provided in section 692A.13.

49. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner.

50. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.

Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record.

51. The information contained in the information program established in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553.

52. The following records relating to a charitable donation made to a foundation acting solely for the support of an institution governed by the state board of regents, to a foundation acting

solely for the support of an institution governed by chapter 260C, to a private foundation as defined in section 509 of the Internal Revenue Code organized for the support of a government body, or to an endow Iowa qualified community foundation, as defined in section 15E.303, organized for the support of a government body:

- a. Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters.
- b. Records received from a donor or prospective donor regarding such donor's prospective gift or pledge.
- c. Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge.
- d. Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor.
- e. Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This paragraph does not apply to a gift or pledge from a publicly held business corporation.
- f. The confidential records described in paragraphs "a" through "e" shall not be construed to make confidential those portions of records disclosing any of the following:
 - (1) The amount and date of the donation.
 - (2) Any donor-designated use or purpose of the donation.
 - (3) Any other donor-imposed restrictions on the use of the donation.
 - (4) When a pledge or donation is made expressly conditioned on receipt by the donor, or any person related to the donor by blood or marriage within the third degree of consanguinity, of any privilege, benefit, employment, program admission, or other special consideration from the government body, a description of any and all such consideration offered or given in exchange for the pledge or donation.
- g. Except as provided in paragraphs "a" through "f", portions of records relating to the receipt, holding, and disbursement of gifts made for the benefit of regents institutions and made through foundations established for support of regents institutions, including but not limited to written fund-raising policies and documents evidencing fund-raising practices, shall be subject to this chapter.

This subsection does not apply to a report filed with the ethics and campaign disclosure board pursuant to section 8.7.

53. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14.

54. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5.

55. An intelligence assessment and intelligence data under chapter 692, except as provided in section 692.8A.

56. Individually identifiable client information contained in the records of the state database created as a homeless management information system pursuant to standards developed by

the United States department of housing and urban development and utilized by the Iowa department of economic development.

57. The following information contained in the records of any governmental body relating to any form of housing assistance:

- a. An applicant's social security number.
- b. An applicant's personal financial history.
- c. An applicant's personal medical history or records.
- d. An applicant's current residential address when the applicant has been granted or has made application for a civil or criminal restraining order for the personal protection of the applicant or a member of the applicant's household.

58. The information provided in any report, record, claim, or other document submitted to the treasurer of state pursuant to chapter 556 concerning unclaimed or abandoned property, except the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer of state pursuant to that chapter. [See 2007 Acts, ch 37, (SF 202)]

59. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A [relating to the sale of cemetery and funeral merchandise and funeral services]. [See 2007 Acts, ch. 175 (S.F. 559)]

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